



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0278; FRL-10000-49-Region 4]

Air Plan Approval; KY; Existing Indirect Heat Exchangers for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is approving changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), through a letter dated March 15, 2018. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County Regulations regarding existing indirect heat exchangers.

DATES: This rule will be effective **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2019-0278. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at akers.brad@epa.gov or via telephone at (404) 562-9089.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through Kentucky's Division of Air Quality via a letter dated March 15, 2018.^{1,2} EPA is approving the portions of this SIP revision that make changes to the District's

¹ EPA received the SIP revision on March 23, 2018.

² In 2003, the City of Louisville and Jefferson County governments merged and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." *See* The History of Air Pollution Control in Louisville, *available at* <https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville>. However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading "Air Pollution Control District of Jefferson County." Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

Regulation 6.07, *Standards of Performance for Existing Indirect Heat Exchangers*.³ The March 15, 2018, SIP revision makes minor and ministerial changes to Regulation 6.07 that do not alter the meaning of the regulation or the emissions levels for sources regulated under the Jefferson County Regulations, such as clarifying changes to its applicability. In addition, other changes in the submittal strengthen the SIP by adding specific test methods and procedures for determining compliance with applicable emissions limits for affected facilities. Accordingly, these rule changes do not relax the emissions reductions to applicable sources, nor do they change any applicable emissions limitations. The SIP revision updates the current SIP-approved version of Regulation 6.07 (version 3) to version 4.

See EPA's July 22, 2019 (84 FR 35052), notice of proposed rulemaking (NPRM) for further detail on these changes and EPA's rationale for approving them. EPA received adverse comments on the NPRM. EPA received one additional comment, available in the docket for this action, which is not relevant to this rulemaking. EPA has summarized and responded to the adverse comments in Section II of this action.

II. Response to Comments

Comment: One commenter states that EPA should disapprove Regulation 6.07 because "it is inconsistent with the National Environmental Policy Act (NEPA) and it violates the Kentucky Clean Air Act."

Response: EPA disagrees with this comment. The Agency is taking action pursuant to the Federal CAA, and actions under the CAA are exempt from NEPA. *See* 15 U.S.C. 793(c)(1). To the extent the commenter intended to reference Kentucky's *Air Pollution Control District Act*

³ EPA received several submittals revising the Jefferson County portion of the Kentucky SIP transmitted with the same March 15, 2018, cover letter. EPA will consider action on these other SIP revisions in separate rulemakings.

(codified at Kentucky Revised Statutes (KRS), Chapter 77, Air Pollution Control) in its comment regarding the “Kentucky Clean Air Act,” EPA notes that the District approved the revisions under KRS Chapter 77, stating in the SIP submittal that KRS 77.180 provides for the control of emissions from indirect heat exchangers.⁴ Further, EPA notes that the commenter does not provide any rationale or information supporting its assertions.

Comment: One commenter states that the rule poses significant risks to public health and the environment and that it will negatively impact Kentucky’s electricity market and increase energy prices in Kentucky. Similarly, another commenter suggests that EPA should “revisit” the rule because it does not properly address the community’s needs and that the “system in place to assist our community in reducing energy costs is not the ‘best’ fit today and is not fit in the future for our community.”

Response: EPA disagrees that the SIP revision poses a significant risk to public health and the environment. The changes to Regulation 6.07 do not alter any applicable emissions limitations and are therefore not expected to increase emissions. Rather, the revisions clarify and strengthen the SIP by providing specific testing requirements for certain sources. In addition, sources regulated pursuant to Regulation 6.07 are not otherwise required by Federal regulations to achieve emissions reductions; therefore, Regulation 6.07 benefits Jefferson County by requiring specific emissions reductions for particulate matter (PM) and sulfur dioxide (SO₂) from these sources.

With respect to the assertion that the action will impact the energy market and costs in Kentucky, EPA’s role in reviewing SIP submittals is to approve state choices provided that they

⁴ The SIP revision also states that KRS 77.180 authorizes the District to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77.

meet the minimum requirements of the CAA. *See* CAA section 110(k)(3). The economic reasonableness of the District’s choice to modify Regulation 6.07 is not a factor that EPA can consider when acting on this SIP revision. *See* CAA section 110(a)(2); *Union Elec. Co. v. EPA*, 427 U.S. 246, 256-66 (1976). EPA notes, however, that the District anticipates no increased costs as a result of these rule revisions, as stated in the SIP submittal. Further, EPA notes that the commenter does not provide any rationale or information supporting its assertions regarding energy costs and risks to public health and the environment.

Comment: One commenter states that EPA should disapprove the changes to Regulation 6.07 because they are “inconsistent with EPA’s national air quality management plan and are inconsistent with the Agency’s statutory authority to define ‘greenhouse gas emissions’ (which is what the proposed amendments are addressing).”

Response: It is unclear how this comment relates to the proposal. The commenter does not provide any specific information regarding the “national air quality management plan” or EPA’s statutory authority to define greenhouse gas emissions, nor does the commenter explain how this plan and authority are allegedly inconsistent with EPA’s action to incorporate the changes to Regulation 6.07 into the SIP. Further, EPA notes that Regulation 6.07 regulates the emissions of criteria air pollutants, namely PM and SO₂, not greenhouse gases.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County’s Regulation 6.07, *Standards of Performance for Existing Indirect Heat Exchangers*, version 4, State effective January 17, 2018, which makes minor and

ministerial changes to Regulation 6.07 that do not alter the meaning of the regulation or the emissions levels for sources and strengthens the SIP by adding specific test methods and procedures for determining compliance with applicable emissions limits for affected facilities. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

IV. Final Action

EPA is approving changes to the Jefferson County portion of the Kentucky SIP included in a March 15, 2018, submittal. Specifically, EPA is approving the District's Regulation 6.07 version 4 into the SIP. The March 15, 2018, SIP revision makes minor and ministerial changes such as clarifying the applicability of the regulation, and includes more specific requirements for test methods and procedures for affected facilities. These changes are consistent with the CAA and EPA policy, and these rule adoptions will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) or with any other applicable requirement of the Act.

V. Statutory and Executive Order Reviews

⁵ See 62 FR 27968 (May 22, 1997).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 17, 2019.

Mary S. Walker

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. In § 52.920(c), table 2 is amended under “Reg 6—Standards of Performance for Existing Affected Facilities” by revising the entry for “6.07” to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
**	*	*	*	*	*
Reg 6—Standards of Performance for Existing Affected Facilities					
**	*	*	*	*	*
6.07	Standards of Performance for Existing Indirect Heat Exchangers	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	1/17/2018	
**	*	*	*	*	*

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[FR Doc. 2019-20841 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]